

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PEGGY BROWN,

Appellant,

v.

LIQUOR CONTROL BOARD,

Respondent.

) Case No. DISM-01-0001

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at Seattle Training Center, 4045 Delridge Way SW, Seattle, Washington, on November 8 and 9, 2001. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Peggy Brown appeared *pro se*. Mark A. Anderson, Assistant Attorney General, represented Respondent Liquor Control Board.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty and willful violation of published employing agency rules and regulations. Respondent alleged that Appellant improperly rang customer purchases; was inattentive while at the cash register due to reading or talking on the phone; failed to greet customers; failed to wear her name tag; sold liquor to a customer who smelled of alcohol; and falsified time sheets.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

## II. FINDINGS OF FACT

2.1 Appellant Peggy Brown was a Liquor Store Assistant Manager and permanent employee for Respondent Liquor Control Board. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 4, 2001.

2.2 Appellant was employed with the Liquor Control Board for approximately 10 years, and she had no history of prior corrective or disciplinary actions. As a Liquor Store Assistant Manager in store 182, Appellant was responsible for overseeing other store clerks; opening and closing the store; setting up cash drawers; providing customer service; processing merchandise sales and handling cash transactions; accounting for store funds and preparing and making deposits. Liquor store employees are also required to be attentive to store security and crime prevention while on duty. As a Liquor Control Board (LCB) employee, Appellant attended store-sponsored training on store procedures and practices. Appellant's supervisor considered Appellant to be experienced in all areas of managing a store and knowledgeable on store policy.

2.3 Store 182 had an alarm security system that was armed whenever the store closed for the evening. Each employee had his/her own alarm code and had 25 seconds after the alarm was set to exit the store. The first employee to arrive at the store was responsible for disarming the alarm. A monthly statement reported the exact times the alarm was armed/disarmed and by which employee.

1 2.4 As a result of unexplained inventory shortages, LCB's loss prevention department installed  
2 covert video cameras in store #182 to view the procedure compliance of employees working at the  
3 store. The cameras were installed from October 31, 1999 through December 5, 1999, and were  
4 placed at each point of sale, the cash counter, the back door and at the entry/exit doors.

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6 2.5 Following a review of the video by loss prevention staff, the store initiated a formal  
7 investigation into concerns that Appellant was not providing adequate customer service and that  
8 she was falsifying time sheets. As part of the investigation, loss prevention staff compared the  
9 videos, which captured Appellant's performance at work, to store alarm reports.

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11 2.6 By letter dated November 20, 2000, Gary J. Ferko, Deputy Director for the Retail Services  
12 Division, informed Appellant of her dismissal effective December 10, 2000. Mr. Ferko charged  
13 Appellant with neglect of duty and willful violation of published agency rules and regulations,  
14 specifically alleging that Appellant improperly rang customer purchases; was inattentive while at  
15 the cash register due to reading or talking on the phone; failed to greet customers; failed to wear her  
16 name tag; sold liquor to a customer who smelled of alcohol; and falsified time sheets.

17 **Charges of improper ringing of customer purchases**

18  
19 2.7 Appellant does not dispute the following events:

20 2.8 On November 3, 1999, Appellant overcharged a customer \$2.69 by ringing two 750 ml  
21 bottles of liquor when the customer only had one 750 ml bottle.

22  
23 2.9 On November 18, 1999, Appellant overcharged a customer \$16.80 by charging customer for  
24 three 1.75 ml bottles of liquor when the customer only had two bottles.

1 2.10 On November 18, 1999, a customer approached Appellant at the cash register with two  
2 bottles. Appellant rang one 1.75 ml bottle and one 750 ml bottle. Appellant subsequently pulled  
3 three additional bottles from under the counter, where select stock items were stored, and bagged  
4 them. Appellant failed to charge the customer for the three additional bottles, and the customer left  
5 with the items.

6  
7 **Charges of reading or talking on the phone while operating the cash register**

8 2.11 LCB Store Procedures require employees to be alert to shoplifters and require employees to  
9 keep store telephone lines open for business and to avoid prolonged conversations with customers,  
10 friends or other employees while on duty. Store practices also prohibited employees from reading  
11 while on duty at the cash register.

12  
13 2.12 Appellant does not dispute the following events:

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15 2.13 On November 14, 1999, Appellant was operating the cash register. Appellant read a  
16 newspaper between 1:45 p.m. and 1:57 p.m. During this time period, Appellant rang two customer  
17 purchases.

18  
19 2.14 On November 18, 1999, from 10:47 a.m. to 11:18 a.m., Appellant engaged in a telephone  
20 conversation from the phone located at the cash register.

21  
22 2.15 On November 26, 1999, between 3:31 p.m. and 4:04 p.m., Appellant read a  
23 magazine/catalog. During the time period, Appellant paused from reading to ring 14 customer  
24 purchases.

1 2.16 On December 2, 1999, Appellant engaged in a telephone conversation from 12:41 and 1:07  
2 p.m. During this time, Appellant rang 10 customer purchases while continuing her conversation on  
3 the phone.

4  
5 2.17 On December 2, 1999, from 12:41 p.m. and 1:07 p.m., Appellant engaged in a telephone  
6 conversation. Appellant rang 10 customer purchases while continuing her phone conversation.

7  
8 2.18 On December 4, 1999, between 10:43 a.m. and 11:04 a.m. and again between 11:05 a.m.  
9 and 11:24 a.m., Appellant engaged in a telephone conversation. Appellant rang 18 customer orders  
10 during these two time periods while continuing to engage in a phone conversation.

11  
12 2.19 Appellant did not appear attentive to the store or to customers while reading or while  
13 engaged in extended telephone conversations on November 14, 19, 26 and on December 2 and 4.  
14 Appellant's inattentiveness resulted in poor customer service and placed the store at risk of theft.

15  
16 **Falsification of time sheets and compensation for time not worked**

17 2.20 On November 5, 1999, Appellant armed the security system and left the store at 8:07 p.m.  
18 Appellant's work schedule reflects that she worked until 8:30 p.m.

19  
20 2.21 On November 11, 1999, Appellant armed the security system and left the store at 7:10 p.m.  
21 Appellant's work schedule reflects that she worked until 7:30 p.m.

22  
23 2.22 On November 15, 1999, Appellant armed the security system and left the store at 7:15 p.m.;  
24 however, her work schedule reflects that she worked until 7:20 p.m.

1 2.23 On November 17, 1999, Appellant armed the security system and left the store at 7:11 p.m.  
2 Appellant's work schedule reflects that she worked until 7:20 p.m.

3  
4 2.24 On November 22, 1999, Appellant armed the security system and left the store at 7:10 p.m.  
5 Appellant's work schedule reflects that she worked until 7:30 p.m.

6  
7 2.25 As a result of Appellant's misrepresentation of the time she worked on November 5, 11, 15,  
8 17 and 22, Respondent compensated Appellant for a total of 77 minutes of time that she did not  
9 work and which she was not entitled to receive.

10  
11 **Failure to greet customers and be attentive to the lobby; failure to wear a nametag; and  
12 selling liquor to a customer who smelled of alcohol**

13 2.26 On February 2, 2000, a Loss Prevention Investigator entered store 182 to conduct a secret  
14 inspection of store procedures. The investigator subsequently reported her observations in a written  
15 report alleging that Appellant, who was operating the cash register that day, did not greet the  
16 investigator or other customers; was not wearing her name tag; and sold alcohol to a customer who  
17 smelled of alcohol.

18 2.27 LCB Policy Manual, Chapter 10, states, in relevant part, that "liquor will not be sold to  
19 persons apparently under the influence of alcohol..." The policy does not prohibit the sale of alcohol  
20 to individuals who smell of alcohol. There is no evidence that the customer here was under the  
21 influence of alcohol, that Appellant suspected the customer was under the influence of alcohol or  
22 that she sold him liquor. Furthermore, credible evidence established that Appellant routinely wore  
23 her nametag, but that on this evening, Appellant was not wearing her nametag because it was  
24 broken.

1 2.28 Gary J. Ferko, Deputy Director for Retail Services, was Appellant's appointing authority.  
2 Prior to determining the level of discipline, Mr. Ferko reviewed the investigative report, the videos,  
3 and the alarm reports. In addition, Mr. Ferko met with Appellant to discuss the allegations. Mr.  
4 Ferko ultimately concluded that Appellant engaged in misconduct when she failed to provide  
5 satisfactory customer service; overcharged customers; gave away products she did not charge a  
6 customer for; read the newspaper while on duty at the cash register; conducted personal telephone  
7 calls while on duty and while operating the cash register; and engaged in theft of time and falsified  
8 work schedules.

9  
10 2.29 When determining the level of discipline, Mr. Ferko considered that as an Assistant  
11 Manager, Appellant was charged with the operations of the store and entrusted with the assets of  
12 state taxpayers. Mr. Ferko believed that Appellant could have received additional training to  
13 improve her overall work performance and customer service skills. However, he was highly  
14 concerned with the incidents where Appellant gave away products, left work early while  
15 representing that she worked a full shift and falsified her work schedule. Furthermore, Mr. Ferko  
16 believed that Appellant engaged in theft of resources by getting paid for time she did not work. Mr.  
17 Ferko also believed that Appellant lacked integrity and failed to act as a role model and lead by  
18 example, which he felt seriously impaired her ability to continue to work for the department in any  
19 capacity. Mr. Ferko ultimately concluded that Appellant neglected her duty and violated agency  
20 policy and that termination was the appropriate sanction.

### 21 22 **III. ARGUMENTS OF THE PARTIES**

23 3.1 Respondent argues that there is no dispute that Appellant engaged in the alleged misconduct  
24 and that dismissal was justified. Respondent argues that the most egregious charges involve "theft  
25 of time" and falsification of timekeeping records and that these charges alone warrant dismissal.  
26 Respondent argues that Appellant's behavior impaired her ability to manage the store and was

1 unacceptable. Respondent argues that Appellant neglected her duty and violated agency policies  
2 when she failed to remain attentive, to accurately ring customer purchases and to accurately report  
3 her time. Respondent also asserts that Appellant disregarded store security and crime prevention  
4 when she did not give her full attention to the store lobby while engaged on the phone or while  
5 reading. Respondent argues that Appellant's theft of time and falsification of timekeeping records  
6 was particularly serious because she was a Liquor Store Assistant Manager and responsible for  
7 setting an appropriate standard. Respondent argues that it has met its burden and that the sanction  
8 should be upheld.

9  
10 3.2 Appellant admits that she made several mistakes when she improperly rang customer  
11 purchases, however, she denies that her actions were willful. Appellant admits that she was reading  
12 while operating the cash register but asserts that she was reading community newspapers and wine  
13 magazines, which were relevant to the store and to the community where the store was located.  
14 Appellant asserts that while some of her phone calls were personal, she believes some were also  
15 work related. Appellant further argues that she frequently worked alone and feared for her safety,  
16 so she talked to her mother on the phone as a source of comfort. Appellant further asserts that she  
17 was not guilty of "theft of time," but rather she was guilty of not looking at the clock when she  
18 signed out for the evening. Appellant also asserts that whenever she forgot to sign out, it was the  
19 practice for other employees to sign out for her. Appellant argues that she was not familiar with the  
20 store's policy manual. Appellant argues that she was a long-term employee, was a good Assistant  
21 Manager who knew how to manage the store, and that termination was too severe.

#### 22 23 **IV. CONCLUSIONS OF LAW**

24 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
25 herein.



1 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
2 the charges upon which the action was initiated by proving by a preponderance of the credible  
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
5 Corrections, PAB No. D82-084 (1983).

6  
7 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
8 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
9 of Social & Health Services, PAB No. D86-119 (1987).

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11  
12 4.4 Willful violation of published employing agency or institution or Personnel Resources  
13 Board rules or regulations is established by facts showing the existence and publication of the rules  
14 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
15 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

16  
17  
18 4.5 Respondent has proven by a preponderance of the credible evidence that Appellant  
19 neglected her duty and violated agency policy when she undercharged/overcharged customers;  
20 conducted extended phone conversations while on duty; read while at the cash register; and when  
21 she inaccurately completed her work schedule to reflect time she did not work and received  
22 compensation for time not worked. Respondent has failed to prove the alleged misconduct  
23 identified by the "secret" loss prevention shopper.

24  
25 4.6 In determining whether a sanction imposed is appropriate, consideration must be given to  
26 the facts and circumstances, including the seriousness and circumstances of the offenses. The

1 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
2 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
3 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
4 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

5  
6 4.7 In assessing the discipline imposed, we cannot conclude that Mr. Ferko's decision to  
7 terminate Appellant's employment was too severe. As an Assistant Manager, Appellant had a duty  
8 to uphold the practices and policies of the agency, to act as a positive role model for subordinate  
9 employees, and to demonstrate a high standard of integrity, honesty, and professional conduct.  
10 Furthermore, as a 10-year Liquor Store employee, Appellant should have been familiar with the  
11 store's policy manual. Appellant's failure to accurately account for her time, that resulted in her  
12 being compensated for time not worked, seriously undermined the trust placed in her by  
13 Respondent and should not be tolerated.

14  
15 4. Respondent has met its burden of proof, and the appeal should be denied.

16  
17 **V. ORDER**

18 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Peggy Brown is denied.

19  
20 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

21  
22 WASHINGTON STATE PERSONNEL APPEALS BOARD

23 \_\_\_\_\_  
24 Walter T. Hubbard, Chair

25 \_\_\_\_\_  
26 Gerald L. Morgen, Vice Chair